

March 18, 2016

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K St. NW
Washington, DC 20007

Via email to: mfreedman@lsc.gov

Re: Comments on Agricultural Worker Population Data for Basic Field—Migrant Grants

Dear Mr. Freedman:

These comments are submitted in response to the Legal Services Corporation's (LSC) "Request for Comments—Agricultural Worker Population Estimates for Basic Field—Migrant Grants" published in the Federal Register on February 5, 2016 requesting comments on three enhancements to its proposal to obtain and implement more current estimates of the U.S. agricultural worker population eligible for LSC-funded legal assistance.

- (1) Comments on the methodology and data used for estimating the agricultural worker population by the U.S. Department of Labor's Employment Training Administration (ETA) considering the additional ETA materials published with this notice.
- (2) Comments on a new estimate of aliens within the agricultural worker population who are eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities.
- (3) Submission of available and reliable state- or region-specific data estimates of the populations of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions.

We understand that LSC identified these three areas for further public input following a round of public comments received to its prior notice, in February, 2015, requesting comments on the proposal to recalculate the distribution of funds for Basic Field-Migrant grants based on initial population estimates obtained from ETA. At that time, we commented that, due to the drastic changes that implementation of the proposed estimates would have on the existing system of delivering legal services to this population, it was critical that LSC provide more information about the data sets and methodology used by ETA, in order to formulate a meaningful response to the proposed estimates.

Thanks to the additional information published by LSC in its January, 2016, notice – together with the unique access to private ETA data sets and methodology afforded to NLADA's data consultant – there is now much more information available to us to offer constructive feedback on the underlying data and methodology utilized. This insight into ETA's methodology also

enables us to point out some weaknesses in the interpretation of the baseline NAWs data, as applied, and to propose adjustments that we feel will result in a more accurate estimate of Michigan's farmworker population.

We endorse and generally adopt the comments submitted by the NLADA agricultural worker programs and also reiterate and incorporate by reference our prior 2015 comments in order to not repeat them here.¹ In addition, we submit the following comments in response to LSC's February, 2016, request regarding the methodology used by ETA as well as additional data and information specific to Michigan's farmworker population²:

I. The LSC/ETA analysis of the national data sources underestimates the threshold count of the Total Number of Farmworkers in Michigan by nearly 10%.

A. Other analyses of the national data consistently calculate a higher and growing number of farmworkers in Michigan than the LSC/ETA estimate.

Pursuant to the ETA analysis prepared for LSC, the "Total Number of Farmworkers in the State [Michigan]" listed in Table II, column B, is 80,549. This is the "threshold" estimate of farmworkers in Michigan upon which all other critical estimates are ultimately based, including the number of "LSC-Eligible Active Agricultural Workers" [T.II, Col. G.], "LSC-Eligible Dependents" [Col. I], and "LSC-Eligible Retired / Out-of-Workforce Population" [Co. L.]. Consequently, it is critical to an accurate accounting of Michigan's farmworker population that the threshold estimate be accurate and consistent with other analyses of the same or similar data sources. However, a survey of other recent analyses of the same or similar national data sources finds resulting estimates that are consistently higher than the count that ETA produced for LSC.

In 2014, the National Center for Farmworker Health (NCFH), together with Dr. Susan Gabbard of JBS International, analyzed the available 2012 Census of Agriculture (COA) data from the U.S. Department of Agriculture in conjunction with the NAWs Public Access Data File (NAWSPAD), to make estimations of farmworkers in every state. The methodology for this NCFH/JBS estimate of farmworkers, both nationally and at the local level, is described at http://www.ncfh.org/uploads/3/8/6/8/38685499/threshold_ncfhpopestmethodology3.3.15.pdf

Similar to the ETA methodology used for the LSC count, NCFH/JBS used NAWs coefficients to determine the number of farmworkers who were migrant or seasonal, the number of farmworker dependents, and the number of dependents who were children and adults. According to

¹ *Comments to LSC from MAP/FLS*, dated April 20, 2015.

² All the numerical statements in this letter are summarized in Attachment A.

information produced via this methodology for the 83 counties in Michigan, the NCFH/JBS estimate of the Total Crop & Animal Production Workers in Michigan counties equals 87,870.³

This recent threshold estimate of the raw number of farmworkers in Michigan (not including dependents or discounted for program eligibility) is supported by a previous computation by Michigan State University researchers who analyzed comparable national data sources and computed the “Total Number of Hired Labor” on Michigan farms to be 86,072.⁴ Note that this estimate does not include “Contract Labor” which has increased significantly in Michigan following the MSU report (see below discussion of the exponential growth of H2A positions).

These analyses of the national data with respect to the threshold number of farmworkers in Michigan are consistent with recent findings presented by Prof. Philip Martin of the University of California, Davis, at a September 2015 livestream conference facilitated by the Migration Policy Institute. In his presentation, Prof. Martin highlighted his finding (presented on the attached graph) that Average Annual Agricultural Employment in Michigan increased 25% from 2004 to 2014, with a dramatic *15% increase between 2012 and 2014*.⁵

Based on these enumerations and findings by reputable experts who analyzed comparable national data sources in estimating the threshold number of farmworkers in Michigan, we believe that the LSC/ETA analysis underestimates the Total Number of Farmworkers in Michigan (Table II. Col. B.). Therefore, we request that LSC adjust this estimate upward by 7,321 to a revised Total Number of Farmworkers of 87,870, consistent with the 2014 NCFH/JBS enumeration. [See Table 1, attached, note (a).]

B. H2A positions certified in Michigan have increased exponentially since 2012.

The ETA analysis used DOL data from fiscal year 2012 to determine the number of H2A and H2B Forestry workers to be included in the total LSC-eligible worker figures for each state.⁶ For Michigan, this resulted in a total of 344 H2A agriculture and H2B forestry workers [Table II, Col. C.]. Given the paucity of H2B forestry workers in Michigan, it is assumed that 100 percent of the workers in this combined number of H2 workers were in fact H2A agricultural workers.

³ See Attachment B, letter to F. Paredes from B. Boggess, NCFH, dated 3/2/2015 and NCFH’s county-by-county worker estimates posted at <http://www.ncfh.org/population-estimates.html>.

⁴ Knudson and Peterson, *Economic Impact of MI’s Food & Ag System*, Table 8, pp. 7-8, MSU (March 2012) at <http://productcenter.msu.edu/uploads/files/MSUProductCenter2012EconomicImpactReport1.pdf>

⁵ “What’s New in Farm Labor? Immigration and the Agricultural Sector,” Migration Policy Institute, Sept. 16, 2015, power point presentation by Philip Martin, University of California, Davis, attached as C.

⁶ See *LSC Management Report* Appendices (updated January 30, 2015); footnote 7, Table I., January 2016.

Instead of relying on outdated FY2012 statistics, more recent and accurate H2A data is available. DOL has now reported current data on H2A positions certified nationwide for FY2015.⁷

Nationally, the difference between the FY2012 and FY2015 H2A worker certification data is substantial – 54,584 H2A workers nationwide -- an increase from 85,248 to 139,832, or +64%. Given that there are accurate and updated data indicating a substantial increase in the number of LSC-eligible H2A workers, LSC should use the FY2015 figures for its current Agricultural Worker Population Estimate Update (and it should use the most current H2 data for each successive triannual Population Estimate Update in the future).

Michigan experienced an even larger increase in H2A positions certified between the FY2012 and FY2015. In FY2015, there was a dramatic uptick to 2,226 H2A positions certified in Michigan, constituting a 547% increase over 2012 numbers.⁸ We request that LSC use the updated ETA data for the number of H2A positions certified in Michigan for FY2015 (Table II, Col. C.), thereby increasing the Total Number of H2A Workers by 1,882 to an adjusted Total Number of H2A Workers in Michigan of 2,226. [See Table 1, attached, note (b).]

II. The “Percent-Eligible” factor applied to the “Total Number of Farmworkers” (excluding H2A workers) to compute “LSC-Eligible Farmworkers” in Michigan does not produce an accurate or statistically-reliable estimate of the real number of LSC-eligible farmworkers in Michigan.

LSC staff comments confirm the observations of commenters from the field that the application of the “LSC-Eligible” percentage factors used in the ETA methodology results in anomalous and drastic disparities in the allocation of farmworkers and dependents among the states.⁹ Because of the huge disruptive impact within state allocations caused by application of the “LSC-Eligible Percentages” (listed on Table III), LSC must ensure that these percentage factors accurately reflect actual LSC-eligible farmworker and dependent populations in each state.

⁷ In January 2015 the H2A figures from fiscal year 2014 were available. See page 39 of *LSC Management Report* (updated January 30, 2015). And as of January 2016, the FY2015 figures became available. See *OFLC Selected FY2015 H2A Statistics* https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Selected_Statistics_FY_2015_Q4.pdf and *Office of Foreign Labor Certification, Annual Report 2014, P.45*, https://www.foreignlaborcert.doleta.gov/pdf/OFLC_Annual_Report_FY2014.pdf.

⁸ See spreadsheet: https://www.foreignlaborcert.doleta.gov/docs/py2015q4/H-2A_Disclosure_Data_FY15_Q4.xlsx listed at: <https://www.foreignlaborcert.doleta.gov/performance/cfm#dis>

⁹ *LSC Report*, p. 60, “The state estimates are substantially affected by variances in the percentage of the agricultural population in each state that are LSC-eligible (i.e., have incomes below the poverty line and meet LSC eligibility criteria regarding citizenship and alien status)... These percentages are determined by factors that can differ across the country, such as income levels, family size (including the number of unaccompanied workers) and the percent of dependents who are citizens that reside with unauthorized workers.” Michigan’s “percent eligible” rate for agricultural workers in the state is reported as 12.68%.

Specifically, the “percent-eligible” factor of 12.68% applied by the ETA analysis to Michigan is irrationally discordant with the corresponding factor (23.11%) applied to Michigan’s neighboring Midwestern states with similar agricultural commodities and labor force characteristics.¹⁰ For the reasons described below, we also believe that this factor is statistically unreliable. We request that LSC direct ETA to recalculate the “LSC-Eligible” factor to be applied in Michigan, using the NAWS Public Access “Six-Region” aggregation for the NAWS Midwest Region, resulting in a new “percent-eligible” factor of approximately 20.0% to be applied to the adjusted “Total Number of Farmworkers” in Michigan to derive an adjusted “Number of LSC-Eligible Farmworkers that Are Not H2 Workers” in Table II, Col. F.¹¹

A. The estimates of LSC-Eligible farmworkers obtained by applying the “percent-eligible” factors derived from the 12-region, non-public NAWS data are less accurate and statistically-reliable than using the aggregated 6-region NAWS data.

It is generally understood that there is limited reliability in using the NAWS to make state-level estimates or conclusions regarding farmworkers. In a recent report submitted to ETA to provide supplemental information on findings relevant to participants in the Migrant and Seasonal Head Start (MSHS) program, NAWS contractor JBS outlined the limitations of applying NAWS data to individual states.

“At OHS’ [Office of Head Start’s] request, in 2009-2010, JBS reviewed the potential of using the NAWS for calculating state-level estimates of MSHS-eligible children (a small subsample of the entire Migrant and Seasonal Farmworker population), and found that, except for two large states [California and Texas], *the estimates at this level were unacceptably error-prone*...JBS and DOL/ETA strongly recommended that these state-level numbers not be utilized for policy or programmatic purposes.” *[emphasis added]*¹²

Similarly, NLADA’s data consultant points out that using the NAWS 12-region survey data to assign LSC-eligibility factors for individual states within certain NAWS regions results in high “relative standard errors” (RSEs) which render the results statistically unreliable, especially for the smaller sampling regions. As we understand the statistician’s consultation, sampling surveys such as the NAWS are expected to produce a range of expected outcomes because they are intended to be representative of the targeted population, as compared to a census count of a

¹⁰ See *Comments to LSC from MAP/FLS*, dated April 20, 2015.

¹¹ NAWS data for the twelve individual NAWS sampling regions which ETA used to compute the “percent-eligible” factors are not publicly available. NLADA’s data consultant, S. Williams, was allowed to access the non-public data sets of NAWS. Published data are readily available for the six collapsed NAWS reporting regions known as NAWSPAD (NAWS Public Access Data) regions. Williams compared the NAWS data for the non-public twelve regions with corresponding data aggregated to the six NAWS public-reporting regions and determined that the “percent-eligible” factor derived from the 6-region data would be approximately 20.0% for the Midwest Region.

¹² *Migrant and Seasonal Head Start Supplement to the National Agricultural Workers Survey 2015 Report*, for DHHS Office of Planning, Research & Evaluation, Administration for Children & Families, Feb. 5, 2016, p.5.

population.¹³ Relative standard errors are used to identify the range of values that can be expected within a particular sample. The more data points that are available (*i.e.*, surveys), the smaller the RSE and, therefore, the greater precision of the data. The consultants further note that when disaggregating sampling results into smaller subgroups (*i.e.*, twelve smaller regions instead of six larger regions), it is expected that there will be higher RSEs. Consequently, the NAWS has adopted the following data suppression rules to determine which survey data will be published:

- *Estimates with RSE's greater than 30% but no more than 50% are published but should be used with caution.*
- *Estimates with fewer than 4 responses or RSE's greater than 50% are considered statistically unreliable and are suppressed.*

In this regard, footnote (4) of Table IV advises that, “Estimates for the NE1 and Lake regions, and the states they contain [which include Michigan], *should be interpreted with caution* because they have relative standard errors between 31 and 50 percent.” [*emphasis added*]

According to NLADA consultant Williams, her *in camera* inspection of the private data found that the NAWS indicates wider variations in the RSE rates for the twelve non-public regions than for the six reported regions.

B. LSC should request ETA to apply the “percent-eligible” factor derived from the NAWS publicly-reported Midwest Region data to more accurately and reliably estimate the number of “LSC-Eligible” farmworkers in Michigan.

Although the methodological limitations of the NAWS may also affect other states and regions, the situation in Michigan is unique. This is because the NAWS Lake Region is one of the smallest of all of the twelve NAWS sampling regions. Consequently, the degree of statistical reliability in using such a small data set to make broad conclusions about farmworkers in the particular state of Michigan is relatively low (*i.e.*, the SRE is relatively high). As we noted in our previous comments, the NAWS Lake Region is comprised of three states -- Michigan, Wisconsin and Minnesota -- with demonstrably dissimilar agricultural commodities and agricultural worker populations.¹⁴ Therefore, any errors resulting from the potential “under-sampling” of Michigan’s farmworker population would be expected to result in a statistical profile that is of limited reliability when applied to the farmworker population in Michigan.

¹³ Depending on the information needs and resources of the various federal agencies that use NAWS data, between 1,500 and 3,600 farmworkers are interviewed annually.

¹⁴ See *Comments to LSC from MAP/FLS*, dated April 20, 2015.

The unreliability of the ETA approach with respect to Michigan is proven by reference to state-specific data. Over 99% of farmworkers in Michigan are reported to be Hispanic/Latino.¹⁵ A recent study by the Julian Samora Research Institute at MSU found that, “in 2009-2013, approximately 30 percent of the Latino population in Michigan was in poverty.”¹⁶ Since crop workers in Michigan are well-known to constitute the poorest segment of the Latino population in Michigan, it is reasonable to conclude that the majority of farmworkers in Michigan live in households with incomes below the poverty line.¹⁷ In contrast, the ETA methodology distorts the rate of poverty among Michigan farmworker households, concluding that the poverty rate is merely 30.54%. However, this estimate matches the reported average rate of poverty overall *for all Latinos in Michigan*. Given that the farmworker population is but a small -- and relatively impoverished -- subset of “all Latinos in Michigan,” one must conclude that the ETA’s “percent-eligible” factor suffers from the statistical unreliability identified by the experts.

NLADA’s consultants advise that an appropriate way to “smooth out” this unintended result, as well as other anomalies in the ETA allocation of farmworkers nationally, is to use the 6-Region NAWS Public Access Data to assign “percent-eligible” factors.¹⁸ This is the approach taken by JBS itself in preparing the recent *Migrant and Seasonal Head Start Supplement to the NAWS 2015 Report*. In the MSHS Supplement, NAWS contractor JBS not only aggregated the survey data into six regions, but opted to also combine the Midwest and Northeast regions into a single reporting region, ostensibly to achieve greater reliability in the reported data.¹⁹

The NLADA data consultant compared the NAWS 12-region sampling to the aggregated NAWSPAD 6-region data and determined that the “percent-eligible” factor for the 12-region grouping of the Midwest Region (comprised of ND, SD, NE, KS, IO, MO, IL, IN, OH, in addition to MI, WI, MN) would be approximately 20% (as compared to the 12.68% factor assigned to the smaller Lake Region). Applying this larger factor to the revised “Total Number

¹⁵ Telamon MMHS Community Assessment, 2007, p. 2., cited in the 2010 Michigan Civil Rights Commission Report on the Condition of Migrant and Seasonal Farmworkers in Michigan
http://www.michigan.gov/documents/mdcr/MSFW-Conditions2010_318275_7.pdf

¹⁶ “Latinos 2025: A Needs Assessment of Latino Communities in Southeast Michigan,” excerpted in NEXO, the Official Newsletter of JSRI, Vol. XIX, No. 1 (Fall 2015), see www.jsri.msu.edu

¹⁷ *2010 Report on the Condition of Farmworkers in Michigan*, Michigan Civil Rights Commission, p.3

¹⁸ The 12-Region NAWS non-public data sources were used by ETA/JBS to derive the LSC-Eligible FWs and dependents. In contrast, the NCFH/JBS farmworker enumeration methodology (above) notes that “NCFH used the *six regional* NAWS coefficients to determine the number of crop production workers who are migratory and seasonal, the number of crop production worker dependents, and the number of dependents that are children and adults.” [*emphasis added*]

¹⁹ In the recent MSHS Supplement submitted to ETA by JBS International, it is noted that “JBS [then] pursued regional estimates of the number of children eligible for MSHS; combining the data into *six groupings of states that represent distinct agricultural regions*.” *Migrant and Seasonal Head Start Supplement to the National Agricultural Workers Survey 2015 Report*, for Office of Planning, Research & Evaluation of the Administration for Children & Families, DHHS, Feb. 5, 2016, p.6. [*emphasis added*].

of Farmworkers” (*i.e.*, after the 7,321 adjustment requested in section I.A., above) results in an *increase* in the “Total Number of LSC-Eligible Farmworkers” (excluding H2A workers) in Michigan of 6,958 *FWs*. [See Table 1, attached, note (c) and “MAP/FLS Table II,” Col. F.]

After adjusting for the expanding number of H2A positions certified (see I.B., above), the revised “Total Number of LSC-Eligible Active Agricultural Workers” in Michigan should be *increased by 8,840* to a revised “Total Number of LSC-Eligible Active Farmworkers” in Michigan of 19,354. [See Table 1, attached, note (c) and “MAP/FLS Table II,” Col. G.]

The significance of this 84% increase in the Total Number of LSC-Eligible Farmworkers is magnified in the subsequent computations of the Total Number of LSC-Eligible Dependents, which is based on the underlying estimates of LSC-eligible farmworkers, as discussed below.

III. LSC-eligible farmworker dependents are underestimated by the operation of inaccurate and under-inclusive assumptions regarding LSC alien eligibility.

It is critical to the accuracy of the overall count that an accurate estimate of the number of dependents is determined. It is undisputed that the overwhelming majority of farmworker households are close to the poverty level,²⁰ if not in fact below the poverty criteria used by the NAWS. Therefore, a difference of even one dependent could determine whether the household technically falls below the poverty level. The addition of a spouse or the birth of a baby could be expected to result in the average household falling beneath the federal poverty guidelines.

In this regard it should be noted that, although detailed information regarding a farmworker interviewee’s immigration and work authorization status is collected in the NAWS survey, we understand that no information regarding the interviewee’s spouse or children is collected beyond the fields represented in the NAWS “Household Grid.” The sole data points regarding dependents derived from the “Household Grid” are: (1) the dependent’s date of birth; (2) the dependent’s date of entry into the US; (3) the dependent’s relationship to a farmworker; and (4) whether the dependent is also a farmworker.²¹ Therefore, the limited information collected in NAWS surveys concerning farmworker dependents’ statuses requires that certain assumptions be made in order to determine which dependents are counted as “LSC-eligible.”

²⁰ “The average individual farmworker income ranged from \$15,000 to \$17,499 and the average total family income ranged from \$17,500 to \$19,999” according to the 2016 NFHC/JBS enumeration which cites the *LSC Agricultural Worker Population Estimate Update*. Legal Services Corporation, 2015. Note that the average farmworker family of two persons would fall beneath LSC’s “125% of poverty” guideline for 2016 of \$20,025.
http://www.ncfh.org/uploads/3/8/6/8/38685499/naws_ncfh_factsheet_demographics_final_revised.pdf

²¹ See NAWS “Household Grid” questionnaire.

In terms of the NAWS “alien eligibility” criteria, we understand that ETA made the following assumptions in order to determine which dependents of eligible farmworkers to include in the count as “authorized/LSC-eligible” dependents.

-- Foreign born children less than 18 must have at least one “authorized” parent to be considered “authorized” themselves.

-- Foreign born adult children (18 or older) must have at least one parent or spouse *born in the US* to be deemed “authorized.”

-- Spouses and other relatives in farmworker households are deemed “authorized” *only if they themselves are US-born*.

We should also note that, in our 20-year experience in providing legal services to eligible farmworkers and dependents in Michigan, we frequently serve eligible families with “foreign-born” members. These clients are typically farmworker families who migrate to work in Michigan from Texas, Florida and other more southern states of the US – and families who have “settled-out” in Michigan and work seasonally in Michigan’s orchards and fields. We have observed that, over the years, very few of our eligible farmworker clients have family members who are not themselves “authorized” in terms of LSC’s alien eligibility criteria. Our first-hand experience is supported by national research on the experience, nationally, of farmworkers who were beneficiaries of the Special Agricultural Worker (SAW) program under the Immigration Reform and Citizenship Act of 1986 (IRCA).

An analysis of USCIS data on legalization during IRCA and findings from the multi-agency survey of IRCA-era immigrants five years after legalization makes it evident that many of the foreign-born spouses and children secured LPR status and that farmworkers, in fact, did file substantial numbers of I-130 petitions for family members. (Smith, Kramer, and Singer 1996) This analysis is particularly relevant because it breaks out outcomes for SAW farmworkers (as distinct from other immigrants).²²

Based on our experience in Michigan, supported by the available national research, we conclude that the first assumption made by ETA -- that foreign-born children who are less than 18 years old, and have at least one “authorized” parent, are themselves considered “authorized” -- is a reasonable assumption.

However, according to the second assumption, adult children of farmworkers would not be deemed “authorized/LSC-eligible” unless one of their parents (or their spouse) is “US born” (*i.e.*,

²² See Nancy Rytina, “IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001”, Paper presented at The Effects of Immigrant Legalization Programs on the United States: Scientific evidence on immigrant adaptation and impacts on U.S. economy and society, The Cloister, Mary Woodward Lasker Center, NIH Main Campus, October 25, 2002.

it is not sufficient that a parent or spouse be a Lawful Permanent Resident (LPR) or naturalized US citizen). Illogically, this assumption would exclude ALL adult children of parents not born in the US from being counted as "authorized/LSC-eligible" dependents -- *even if that child is in fact a US citizen or LPR.*²³ It is our experience that, in most cases, if the farmworker parent is a naturalized citizen, the child would have likely also become a naturalized citizen as a child, or an LPR, or would have a pending I-130 petition. However, such LSC-eligible children are not counted by ETA pursuant to its second assumption.

The third assumption -- that spouses are only considered "authorized" if US born -- is patently under-inclusive. In our experience, many spouses who were not born in the US are eligible aliens according to LSC guidelines. For example, many farmworkers who have become naturalized US citizens have previously petitioned for their spouses; and thus, their spouses have obtained lawful permanent resident (LPR) status. Many other farmworkers who are lawful permanent residents have petitioned for spouses; and thus, their spouses are either currently lawful permanent residents, or have pending I-130s with the requisite US citizen relative.

A. LSC should direct ETA to correct the assumptions that it applied to the NAWS data to estimate the number of dependents who are "authorized/LSC-eligible."

Especially in light of the clearly erroneous third assumption, we strongly believe there is a significant undercount of "authorized/LSC-eligible" dependents in the current ETA estimate. The application of these assumptions to the NAWS data base results in ETA assigning unreasonably low values for the "Average Number of LSC-Eligible Dependents per Active Farmworker" in Table II, Col. H. (Nationally, these assigned values range from a low of 0.14070 to a high of 0.37154.) Correction of the faulty assumptions upon which these values are based is required to accurately estimate the real number of farmworker dependents who are LSC-eligible. Therefore, LSC should ask ETA to rerun its estimates using more accurate assumptions, as follows:

- LSC should direct ETA to change its assumption regarding foreign born children who are 18 or older to include the adult children of farmworkers whom NAWS has identified as "authorized," rather than only those born in the US.
- LSC should direct ETA to correct its assumptions regarding foreign born spouses to include spouses whom the NAWS survey has identified as "authorized," rather than only those who are "US born."

²³ There is no LSC eligibility criteria requiring that "a foreign-born child must have a US citizen parent." Per LSC alien eligibility guidelines, such children could have obtained LPR status (or be current I-130 beneficiaries) by virtue of an application for status filed by a non-spouse relative. For example, we often serve young couples where the spouse (often the wife) obtained (or is in the process of obtaining) LPR status through a petition filed on her behalf by a parent (often here IRCA-legalized father). The second prong of the LSC eligibility criteria is normally satisfied by having one or more US citizen children.

B. There is specific, recent and reliable data regarding the number of farmworker dependents in Michigan which questions the accuracy of ETA's assumption that only 31% (0.31122) of farmworker dependents are LSC-eligible. Applying a more appropriate "percent-eligible" factor to the number of such dependents would result in a substantial increase in the count of LSC-eligible dependents in Michigan.

By applying the above-noted erroneous assumptions about the LSC-eligibility of farmworker dependents in Michigan, ETA arrived at an unreasonably low factor of 0.31122 as a determinant of the "percent-eligible" dependents in Michigan, meaning that only approximately 31% of Michigan farmworker dependents are considered "LSC-eligible." [See Table II., Col. H.] This conclusion is inconsistent with our experience and reputable data derived from other federally-funded farmworker service agencies in Michigan.

There is recent research in Michigan which supports the ETA's conclusion that there are approximately 2.2 non-farmworkers per farmworker household in Michigan.²⁴ This Michigan-derived ratio is markedly consistent with ETA's calculation of the rate of 2.205 as the "Average Number of Dependents Living in the US" of Michigan farmworkers [Table IV.] In contrast, however, ETA's conclusion that, on average, only 31 percent of these Michigan dependents living in the US are "LSC-eligible" is without precedent in the reported data of Michigan's federally-funded farmworker service agencies or our experience.

The ratio of dependents per Michigan farmworker household was derived from data sources used to develop the *2013 Michigan Update to the MSFW Enumeration Profiles Study* conducted by Dr. Alice Larson on behalf of the State of Michigan Interagency Migrant Services Committee (IMSC).²⁵ Dr. Larson collected source data from the client data bases of several large Migrant Health Clinic programs as well as from the state-wide NFJP grantee, Telamon Corporation; and she reported that "the results found 2.22 migrant and 2.27 seasonal non-farmworkers in accompanied households."²⁶ The fact that this Michigan-based finding is nearly identical to the ratio determined by ETA argues in favor of the accuracy and reliability of both studies' conclusions relating to the number of dependents per Michigan farmworker.

It is significant that the Larson research was based on Michigan-specific sources consisting of the client databases of federal migrant service agencies with eligibility guidelines concerning household poverty and alien status that are consistent with the NAWs criteria used to establish "below poverty."²⁷ Therefore, it would be reasonable to conclude that a large majority of the

²⁴ *Migrant and Seasonal Farmworker Enumeration Profiles Study, Michigan Update 2013*, A. Larson for the State of Michigan Interagency Migrant Services Committee, June, 2013, p.29

²⁵ *Id.*, p.3.

²⁶ *Id.*, p.29.

²⁷ As a federal NFJP grantee, Telamon clients must meet income guidelines based on family size and the DHHS poverty level (*i.e.*, not 125% of poverty as allowed by LSC eligibility criteria) or 70 percent of the Lower Living

farmworker dependents identified by the Michigan study are also “LSC-eligible” in terms of household poverty and alien status. Consequently, it is logical that a greater proportion of these Michigan farmworker dependents should be considered “LSC-eligible” than the 0.331 average posited by the ETA analysis in Table IV.

NLADA’s consultants reviewed this issue of “imputation of status” for foreign-born spouses and children of authorized (*i.e.*, US Citizen and LPR) farmworkers. Although they agree that ETA’s above assumptions result in errors in the imputation of legal status, they believe that it would be necessary for ETA to re-run the appropriate tabulations of NAWS data using corrected assumptions in order to obtain an accurate “percent-eligible” rate for the “Average Number of LSC-Eligible Dependents per Farmworker.” That being the case, they estimate that between 50 to 75% of foreign-born dependents of “authorized” farmworkers are themselves authorized.

Based on our first-hand experience, the Michigan-specific research on dependents, and the opinions of the national consultants, we believe that correcting these erroneous assumptions would result in a rate of LSC-eligible dependents to Michigan farmworkers of at least 60%. We request that LSC direct ETA to correct the identified errors in its methodology and re-compute the “Average Number of LSC-Eligible Dependents per Active Farmworker” in Table II, Co. H. Note that, for the purposes of calculating a baseline estimate of additional “LSC-eligible” farmworkers and dependents which we believe were undercounted, we have used the dependent ratio of 60% in our proposed alternative estimate. [See Table 1, attached, note (d).]

IV. LSC’s proposal for estimating the numbers of agricultural workers who are eligible for services based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities is generally reasonable.

A. LSC identified relevant, key studies and, with one noted exception, made a reasonable estimate.

We support the inclusion of an estimate of agricultural workers who would be eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities. LSC correctly recognized that the 2015 report’s lack of inclusion of this group of workers was erroneous. We appreciate LSC’s efforts to review available data regarding this population and to make a reasonable estimate based upon the best available data.

Standard Income Level (LLSIL) determined by DOL annually. <https://www.doleta.gov/Farmworker/pdf/TEGL-25-04attach.pdf> Note also, that to be eligible to receive services from Telamon NFJP, an individual must be authorized by the Attorney General to work in the United States and be an eligible farmworker or a dependent of an eligible farmworker. <http://www.telamon.org/michigan-nfjp.aspx>

B. LSC should direct ETA to use LSC-criteria for determining poverty levels in its calculations for Table VI instead of the NAWS variable

According to NLADA's consultant, ETA mistakenly used NAWS poverty criteria, rather than the LSC poverty eligibility guidelines, in computing eligible victims of abuse, resulting in an undercount of approximately 9% of agricultural workers who would be eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities. LSC should direct ETA to recalculate the rates in Table VI using LSC poverty criteria. As indicated in reference to our preceding request that LSC direct ETA to recalculate the "percent-eligible" dependents in Michigan, because we do not know the results of such corrected tabulations of the data, we have applied the estimated 9% increase to the ETA calculation of abuse victims in Michigan in its current estimate of the "Number of Unauthorized and Below Poverty 1626-4-Eligible Farmworkers" for the purpose of calculating a proposed estimate of additional "LSC-eligible" Michigan farmworkers. [See Table 1, attached, note (e).]

V. Conclusion

A. We request the following proposed adjustments to ETA's computation of the "Total LSC-Eligible Farmworker Population" in Michigan [revised Table II]

In Table 1, attached, we present our proposed alternative estimate of the "Total LSC-Eligible Agricultural Worker Population" as indicated on ETA's Table II. Our proposed total is 86,398 which, compared to LSC's "Current Population Estimate" of 90,556 is still a reduction in population allocation as well as funding. We arrive at our recommended total population estimate by making the following proposed adjustments to ETA's methodology and data computations:

- Increase the Total Number of Farmworkers from 80,549 to 87,870 [note (a)]
- Increase the Total Number of H2A Farmworkers from 344 to 2,226 [note (b)]
- Raise the ratio of LSC-Eligible FWs/Active FWs from 0.1268 to 0.20 [note (c)]
- Raise the ratio of LSC-Eligible Dependents from 0.3112 to 0.60 [note (d)]
- Apply a 9% increase to the Number of 1626.4-Eligible FWs to 2,239 [note (e)].

B. We support the proposed two-year phase in of the new allocations.

We support the phase in of funding. As discussed in the 2015 comments, this revised estimate will cause many adjustments in the provision of services to agricultural workers across this country that will require time and resources.

C. We request a continuing opportunity to give program-level feedback on LSC's methodology and data used for future farmworker allocations.

We also support LSC's proposal to update the estimates at regular intervals. While we understand LSC will move forward using the methodology it determines to provide the best estimate at this time, we also continue to gather additional information and better understand the underlying assumptions of the ETA data. We look forward to continued opportunities in the future to continue to dialogue regarding the methodology and data used to calculate the estimate of LSC-eligible agricultural workers.

D. We request meaningful opportunities to engage with LSC in dialogue regarding service delivery adjustments and models that may follow this farmworker enumeration.

We understand that LSC will be making decisions regarding the support and configuration of different service delivery models; and we hereby request an opportunity to engage in meaningful dialogue and to provide timely feedback regarding critical service delivery issues.

We thank you for the opportunity to comment on LSC's proposed "Agricultural Worker Population Estimates for Basic Field—Migrant Grants" and to provide further detailed input based on the relevant additional data and reports noted herein. We respectfully request that LSC direct that the suggested adjustments to the ETA data and methodology be made to improve the accuracy and statistical reliability of the resulting estimates in order that all LSC-eligible farmworkers and dependents in Michigan continue to be provided an equitable and appropriate level of high quality legal resources.

Very truly yours,

/s/
Robert F. Gillett
Executive Director
Michigan Advocacy Program

/s/
Thomas K. Thornburg
Co-Managing Attorney
Farmworker Legal Services

/s/
B. Daniel Inquilla
Co-Managing Attorney
Farmworker Legal Services

Att. A: Table 1. *Comparison of LSC-Eligible Agricultural Worker Population – Michigan*, MAP/FLS, March 18, 2016

Att. B: Letter to F. Paredes, Assistant State Monitor Advocate, Michigan Workforce Development Agency, from B. Boggess, National Center for Farmworker Health, enclosing county-level estimates of the number of hired and contracted crop and animal workers in Michigan, March 2, 2015

Att. B: "Farm Labor: 2015," selected powerpoint slides presented by Philip Martin at "What's New in Farm Labor? Immigration and the Agricultural Sector" -- a forum presented by the Migration Policy Institute, Wash., D.C., Sept. 16, 2015